

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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Via email

Dear Councilmembers:

I write on behalf of the National Law Center on Homelessness & Poverty (“Law Center”) to urge you to **oppose, or significantly amend, proposed Ordinance No. 32,262 to Amend Art. XII, Ch. 82 Code of the City of New Orleans, creating procedures for clearing homeless encampments.** We all share the goal of a New Orleans without homeless encampments—but the best, most cost-effective, and permanent way to achieve that is to ensure that all who live in those encampments are able to access adequate, alternative housing. While we welcome clear procedures for addressing unsheltered homelessness, the proposed ordinance misses addressing this most significant feature of homeless encampments policy—namely, where will those residing in the encampments live if not in the targeted encampment? Rather, we are deeply concerned that the proposed ordinance merely provides procedures and cover for pursuing ineffective, expensive, and likely illegal punishment strategies, rather than constructive solutions that can actually end homelessness in the city.

The Law Center is the nation’s only legal advocacy organization dedicated solely to ending and preventing homelessness. In 2017, we published *Tent City, USA: The Growth of America’s Homeless Encampments, and How Communities are Responding*, collecting data on 187 cities’ policy responses to encampments, and best practices, model policies, and case studies from across the country. See National Law Center on Homelessness and Poverty, TENT CITY, USA: THE GROWTH OF AMERICA’S HOMELESS ENCAMPMENTS, AND HOW COMMUNITIES ARE RESPONDING (2017), https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf. Additionally, since 1991, the Law Center has documented a dramatic increase in laws that criminally punish homeless people for performing harmless, life-sustaining activities in public places, as well as the negative consequences of these discriminatory measures nationwide. See National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2016), <https://www.nlchp.org/documents/Housing-Not-Handcuffs>. The Law Center’s recent reports demonstrate that laws such as the proposed encampment ordinance do not address the underlying causes of homelessness, and instead injure homeless persons’ rights and waste taxpayer resources by temporarily cycling people through the costly criminal justice system only to have them return to the streets, now with criminal records that make it more difficult for them to access needed employment, housing, and benefits.

Encampment policies must provide enough time, and resources, to ensure encampments are ended through housing the individuals residing in them. Our Tent City report found a 1342% growth in reported encampments between 2007 and 2017, but only 11% of the 187 cities we surveyed required any notice

before clearing encampments or storage of property collected during sweeps, and only 3% required alternative housing be offered. While we appreciate New Orleans creating clear procedures for camp clearance, 24-hours-notice does not provide enough time for service providers to build relationships with camp residents, determine their housing needs, and get the residents housed. Charleston, WV, and Indianapolis, IN, both provide at least 14 days' notice by law, require coordination with local service providers to make housing plans for affected individuals, and allow the residents to remain until alternative housing is available. Pursing a sweep without adequate notice or housing plans means the city will only be destabilizing the encampment residents, removing their survival materials, scattering them and disrupting their safety networks and connections to service providers, potentially criminally charging them, all of which only serve to prolong their homelessness and ensure the city will have to do the same procedure again, only with more barriers to those individuals accessing housing.

We hope the city will draw on our experience and utilize our Encampment Best Practices and Procedures which accompany this email, and the best practice ordinances found in the appendix to our *Tent City* report. Any “solution” which does not meet the actual needs of those living in the encampments—including where they can find a safe place to be, day and night, with their belongings—will result in those individuals needing to improvise their own solutions to meet those needs, and most likely, the city will not like those solutions any more than they like the current ones. Only by providing a better alternative for these individuals that actually meets their needs will the city stop this wasteful and harmful cycle. In February, Los Angeles adopted our Best Practices into their own official guidance, which we consider the best model to date. See Los Angeles Homeless Services Authority, Guiding Principles and Practices for Unsheltered Homelessness (2019), <https://www.lahsa.org/documents?id=2951-guiding-principles-and-practices-for-unsheltered-homelessness.pdf>. The proposed San Francisco and Seattle ordinances in our report also provide model language for the city to draw on, with requirements for adequate notice and adequate alternative housing to be provided before an encampment clearance can proceed.

Punishing homelessness through sweeps, tickets, or arrests is an expensive and ineffective response to homelessness. Whether punished through civil fines or immediate incarceration, homeless persons usually cannot pay fines, and because they often miss notices to appear in court due to a lack of permanent address, those fines frequently turn into a bench warrant and a criminal arrest. As stated by the Department of Justice in the context of its argument regarding an anti-camping ordinance in *Bell v. Boise*:

Criminalizing public sleeping in cities with insufficient housing and support for homeless individuals does not improve public safety outcomes or reduce the factors that contribute to homelessness... Issuing citations for public sleeping forces individuals into the criminal justice system and creates additional obstacles to overcoming homelessness. Criminal records can create barriers to employment and participation in permanent, supportive housing programs. Convictions under these municipal ordinances can also lead to lengthy jail sentences based on the ordinance violation itself, or the inability to pay fines and fees associated with the ordinance violation...Finally, pursuing charges against individuals for sleeping in public imposes further burdens on scarce public defender, judicial, and carceral resources. Thus, criminalizing homelessness is both unconstitutional and misguided public policy, leading to worse outcomes for people who are homeless and for their communities.

Bell v. Boise, et. al., 1:09-cv-540-REB, Statement of Interest of the United States (Aug. 6, 2015).

Numerous studies have shown that communities actually save money by providing housing and services to those in need, rather saddling them with fines, fees and arrest records and cycling them through expensive hospital and jail systems. See HOUSING NOT HANDCUFFS, *supra*. The Economic Roundtable of Homelessness in Los Angeles found that housing reduced average monthly spending by 41% per person, even

after including the cost of providing housing. *This savings included a 95% reduction in jail facilities and services costs.* Though it may hide the costs in the law enforcement and jail budget, passing the encampment ordinance at issue here will incur significant costs for the city and its taxpayers—without solving the problem of homelessness. If the city’s true interest is in public health, safety, and economic growth, it could make a much better investment by providing housing and services, rather than making it harder for people to exit homelessness due to criminal penalties and arrest records.

Additionally, this proposal runs afoul of the federal government’s policies to end homelessness, and may ultimately threaten the community’s access to federal funding to provide homeless services. For the past four years, the U.S. Department of Housing and Urban Development has asked questions on its funding application for its \$2.5 billion Continuum of Care funding stream to reward Continuums that have implemented constructive solutions to homelessness, and restrict funding from those that continue criminalization strategies.

Punishing Camping in the Absence of Adequate Alternatives is Unconstitutional. Just last September, the Ninth Circuit Court of Appeals held in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018) that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” It ruled that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”

Based in part on *Martin*, a federal judge in California enjoined enforcement of an anti-camping ordinance against a group of close to 1,000 homeless campers in Orange County, forcing the county and cities to provide alternative housing before they could clear the encampment. See *Orange County Catholic Worker et. Al v. Orange County*, Order Granting Temporary Restraining Order, Case 8:18-cv-00155 (Feb. 6, 2018). 57% of lawsuits brought against municipalities for anti-sleeping or anti-camping ordinances over between 2014 and 2017 resulted in decisions favorable to the homeless plaintiffs. See National Law Center on Homelessness and Poverty, HOUSING NOT HANDCUFFS: A LITIGATION MANUAL (2017), <https://www.nlchp.org/documents/Housing-Not-Handcuffs-Litigation-Manual>. Litigation would be an additional fiscal cost to the city, as well as injuring the dignity and rights of its most vulnerable citizens.

In an era of record poverty, prolonged unemployment, and a shrinking stock of affordable housing, sensible and cost-effective policies are needed – not ineffective measures that waste precious taxpayer dollars. The Law Center urges the New Orleans City Council to vote “no” on the proposed ordinance No. 32,262, or to amend it to codify our Encampment Principles and Best Practices. If New Orleans is truly concerned about the existence of homeless campers on its streets, the best way to address the problem is by removing the need for people to shelter themselves in public in the first place, by providing adequate housing and services. Our reports document numerous case studies of constructive alternatives to criminalization; if the city would like, we would be happy to work with you to implement solutions that work for everyone. Please feel free to contact me at etars@nlchp.org or 202-638-2535 x. 120 with any questions or concerns.

Sincerely,



Eric S. Tars
Legal Director